

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

MAY 17, 2005

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, May 17, 2005 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Acting Chairman Robert Stephen

Present: Commissioners Robert Stephen, Pauline Ikawa, Barbara Heath, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. On motion by Commissioner Ikawa, seconded by Commissioner Heath, the Commission unanimously approved the Minutes of the Commission meeting held on April 19, 2005.

II. **APPOINTMENTS**

8:30 a.m. - Equivalency Interviews

The following candidate was interviewed by Commissioners Robert Stephen, Pauline Ikawa and Barbara Heath:

CANDIDATE

DETERMINATION

THOMAS A. FRANGOS

APPROVED

On motion by Commissioner Heath, seconded by Commissioner Ikawa, the Commission approved Mr. Frangos' experience as equivalent experience required for a broker applicant.

III. **DISCUSSION**

SEAN BOSSIE of RE/MAX Presidential submitted a request for a Commission ruling regarding the facilitation of short term rentals with respect to licensure requirements. After review and discussion, the Commission directed Investigator Ann Flanagan to prepare an answer to Mr. Bossie's request and present her answer to the Commission at its next scheduled meeting for approval.

FILE NO. 2004-023 – The complainant of File No. 2004-023 submitted a request to the Commission to withdraw the complaint. After review and discussion, and on motion by Commissioner Heath, seconded by Commissioner Ikawa, the Commission unanimously decided to deny the withdrawal of Complaint File No. 2004-023, and directed Ann Flanagan, the Commission's Investigator to initiate a parallel complaint on the above noted matter.

BLAKENEY BARTLETT, of VT/NH Real Estate Educators, submitted questions on Agency requesting a Commission clarification. After review and discussion, the Commission decided to table its decision on the questions presented to allow the Commission members absent from the meeting to have an opportunity to participate in the decision. Ms. Bartlett's questions will be

presented to the Commission at the next scheduled meeting.

Fran West, the Commission's Education Assistant asked for a clarification as to when a new salesperson or broker applicant can complete and have their signature notarized on the application for licensure prior to submission to the Commission. Ms. West explained that the Executive Director made an interim ruling that no new application shall be accepted when the applicant's signature is notarized more than 10 days prior to submission. After review and discussion, the Commission decided that no application shall be accepted when the notarized signature of the applicant is more than 10 days prior to submission.

Fran West, the Commission's Education Assistant asked the Commission for a clarification as to what the Commission feels is acceptable for a 6 hour state portion pre-licensing course for applicants who are supplying to the Commission 34 hours of a national portion pre-licensing course which has been completed in another state. After review and discussion, the Commission decided that the course must consist of 6 hours of classroom time, and review portions of state material will not be accepted towards the 6 hours. All courses must be submitted to the Commission for approval. Pre-licensing instructors to be so notified.

IV. OTHER BUSINESS

1. Tuesday, June 28, 2005, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2004-043**

Evaluator: Commissioner Heath

Determination: No violation, should not be heard..

(b) **FILE NO. 2005-004**

Evaluator: Commissioner Heath

Determination: No violation, should not be heard

The above determinations were unanimously approved by the Commission.

3. ORDER

The following Order was approved by the New Hampshire Real Estate Commission. A copy of the Order is attached and becomes part of the official minutes of this meeting.

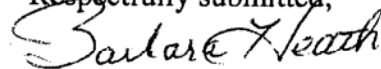
FILE NO. 2003-04-04 LOUIS ELSTON VS ROBERT ALLARD, JOY MERRILL &
DEBRA BALL (CENTURY 21 ALLARD & MERRILL REALTY, INC.)

4. An Order was issued by the Commission in Response to a Motion to Dismiss on Complaint File No. 2004-024

V. **ADJOURNMENT**

Motion by Commissioner Ikawa, seconded by Commissioner Heath to adjourn the meeting. Acting Chairman Commissioner Stephen adjourned the meeting at 10:55 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Heath".

Barbara Heath
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2003-04-04

LOUIS ELSTON

V

ROBERT ALLARD, JOY MERRILL, DEBRA BALL

(CENTURY 21 ALLARD & MERRILL REALTY, INC.)

This matter comes before the Real Estate Commission on the complaint of Louis Elston, alleging violations of NH RSA 331-A:26, IV, XIX; RSA 331-A:25-b, II, a; Rea 701.02 by Robert Allard, Joy Merrill, and Debra Ball. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Robert Allard (hereinafter referred to as Respondent) was licensed as a real estate broker on 4/9/68, and was the principal broker of Century 21 Allard & Merrill Realty, Inc., Salem office at the time of the alleged violations.
2. Joy Merrill (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 9/16/85, and was licensed as a real estate broker on 12/28/89, and was the principal broker of Century 21 Allard & Merrill Realty, Inc., Plaistow office at the time of the alleged violations.
3. Debra Ball (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 12/30/85, and was licensed as a real estate broker on 3/11/94, and was the principal broker of Century 21 Allard & Merrill Realty, Inc., Derry office at the time of the alleged violations. It was agreed by all parties that Debra Ball

had little or no involvement in this matter and the complaint against her was dismissed.

4. Robert Allard and Joy Merrill were owners of all the offices before and after the offices were merged.
5. Louis Elston (hereinafter referred to as Complainant) purchased a property listed through Respondents at the Plaistow office from the same seller who had previously sold an adjacent property listed through Respondents at the Salem office to a different buyer which the seller had misrepresented the acreage.
6. Robert Allard in his Form 11-A reply indicated that that he did not know about the problems with the acreage in the first transaction until after Complainant closed on the second transaction, and references Complainant's closing date of October 30, 1998 compared to the letter from the attorney for the buyers of the first transaction dated December 4, 1998.
7. Century 21 Allard & Merrill had negotiated a civil settlement with the buyer from the first transaction with a non-disclosure clause.
8. Frank Tallion, office manager for Century 21 Allard & Merrill testified that Complainant received a letter from their attorney on September 10, 2002, inviting Complainant to review the settlement documents (Tr. p. 51-52, lines 18-14).
9. The plot plan showed the actual acreage and would have normally been included with the listing information pursuant to Century 21 Allard & Merrill office policy,

but was inadvertently omitted in the listing for the property bought by Complainant.

10. Joy Merrill in her letter to the Commission dated 5/14/03 stated, "The deed, tax bill and plan of land from the town all indicated that Mr. Elston was indeed purchasing 11 acres."
11. Respondent Joy Merrill forwarded to the Commission a copy of the town plan that she had in her possession; it showed Complainant's Lot 122 as 7.44 acres not the 11.8 acres that Respondents were aware of.
12. Frank Tallion testified reading from a deposition, that Complainant was aware of the discrepancy between the map and the tax card prior to purchasing the property because Complainant had obtained the map on his own from the town, but was convinced by an official at the town hall that the map was incorrect (Tr. p. 56-58, lines 10-9).
13. Complainant testified that he was aware of the acreage discrepancy prior to purchasing the property because he went to the town hall and saw that the map indicated 7.44 acres, but was convinced by the clerk at the town office that it must be 11.8 acres because it was in current use (Tr. p. 63-64, lines 17-6).
14. Complainant testified that not only did he get significantly less acreage than he thought he was buying, the actual acreage was insufficient to maintain its current use status, which required him to pay a \$2,800 penalty and higher taxes (Tr. p. 21-22, lines 20-12).

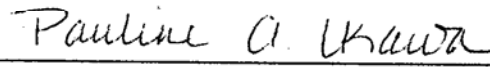
15. Complainant testified that he believes that because each office handled its own lawsuits and neither of the partners knew what was going on at the other office, it resulted in poor communication between the Century 21 Allard & Merrill offices (Tr. p. 77, lines 5-8).

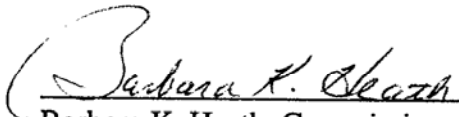
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

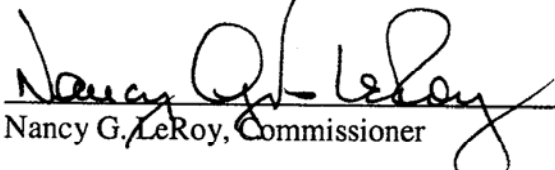
A real estate agency should disclose knowledge of a boundary dispute on another property that might affect the subject property, but this case lacks sufficient evidence to conclude that Respondents knew about the acreage problem with the adjacent property prior to the transaction of Complainant's property. The Commission agrees with Complainant that Respondents should have obtained the plot plan map (Tr. p. 78, lines 4-6). However, Complainant did obtain this information on his own from the town offices prior to purchasing the property. Complainant was aware of the acreage discrepancy between the map and tax information. Accordingly, based on a totality of the circumstances, the Commission rules that Respondents did not violate the above aforementioned statutes or rules.

Commissioner Slattery evaluated this case and did not take part in the hearing or decision.


Robert S. Stephen, Acting Chairman
5-17-05
DATE


Pauline A. Ikawa, Commissioner
5/17/05
DATE


Barbara K. Heath, Commissioner
5/17/05
DATE


Nancy G. LeRoy, Commissioner
5/18/05
DATE